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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,716

01/19/2005

Hans Rudolf Gygax

102790-188 (30055 US)

2373

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EXAMINER

MCKANE, ELIZABETH L

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

10/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/521,716	GYGAX ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Leigh McKane	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nightingale (GB 2,042,340).

Nightingale teaches a fragrance cartridge **18** comprising a reservoir **19** of fragrance and capillary channels **20** for controlling emission of fragrance from the device (Figure V; page 1, lines 39-43). The fragrance is prevented from leaking from the reservoir by capillary action. See page 1, lines 58-59. The capillaries may be 0.4mm in diameter and 20 mm long. See page 2, lines 59-61. Moreover, Nightingale evidences that the emission rate is just over 27.8 ng/s (0.1 mg/hr). See page 3, lines 5-7.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaio et al. (US 20020114744) in view of Nightingale.

Chaio et al. teaches a substantially flat, rectangular support body **001** having a plurality of cartridges **004** embedded therein. Each cartridge **004** includes capillary tubing **010** for transporting scent from a scent reservoir **016** to scent release openings **011**. In addition, the support body **001** includes a memory storage unit **031** which can be a memory chip. The memory storage unit can also store scent recovery sequence information for use in coordinating multimedia playback and scent recovery information. See Abstract. In Figure 19, Chaio et al. evidences an embodiment wherein channels **044,045** in the support body **110** permit ingress of a carrier gas from pump means (fan) to assist in dispersal of the scent from the cartridge **004**. See Figures 5, 6, and 19; paragraphs [0053]-[0054], [0089]-[0091], [0100]. Chaio et al. is silent with respect to channels within the cartridge to permit ingress of carrier gas into the reservoir.

Nightingale teaches a fragrance cartridge **18** comprising a reservoir **19** of fragrance and a plurality of capillary channels **20** for controlling emission of fragrance from the device (Figure V; page 1, lines 39-43). As Nightingale discloses that employing a plurality of capillary channels is particularly useful to achieve a higher emission rate, it would have been obvious to use the capillary channels of Nightingale as the capillary tubing of Chaio et al. in order to achieve improved emission of low-volatility liquids.

#### ***Response to Arguments***

5. Applicant's arguments filed 7 August 2007 have been fully considered but they are not persuasive.

6. Applicant argues on page 5-6 of the Response that Nightingale fails to describe the use of channels to permit ingress of carrier gas into the reservoir and egress of fragrance-containing carrier gas from the reservoir.” The Examiner respectfully disagrees. The claims only require a cartridge “provided with channels *to permit* ingress of carrier gas into the reservoir and egress of fragrance-containing carrier gas from the reservoir” (emphasis added). This limitation amounts to no more than the intended use of the device. In other words, the device of Nightingale need only be capable of permitting ingress and egress of a carrier gas into and from the reservoir. As the capillary passages of Nightingale are indeed capable of permitting ingress and egress of a carrier gas, the device of Nightingale fulfills the claim requirements. Indeed, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See *Ex parte Masham*, 2 USPQ 2d 1647.

Furthermore, while applicant points to Figures I, III, and IV as being unable to sustain a flow of carrier gas, it was Figure V that was relied upon by the Examiner. Certainly the embodiment in Figure V is capable of permitting ingress of a carrier gas through a number of the capillary passages and egress of the carrier gas through a number of the capillary passages.

7. With respect to the combination with Chiao, applicant asserts that the “Chiao cartridges are large, complex devices” and “so far apart” from the Nightingale device “that it would require experimentation to combine both reference.” Again, the Examiner respectfully and strongly disagrees with this assessment of the combination. Chiao already discloses the use of capillary tubing to transmit a fragrance from a reservoir to a point of release. The combination results in

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replacing the multiple passages of Nightingale for the single passage of Chiao. The combination is a simple one and would require no more than routine experimentation.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1797**

elm  
12 October 2007